

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JACOB ADAM CASTRO,
CDCR #K-48103,

Plaintiff,

G.J. JANDA; BENTLY; DR. GREY;
VALENCIA; S. HERNÁNDEZ; L.
HERNANDEZ; SUDU; CONES;
LIEUTENANT DAVIS,

Defendant.

Civil No. 13cv2750 BEN (MDD)

**ORDER DISMISSING FIRST
AMENDED COMPLAINT FOR
FAILING TO STATE A CLAIM
PURSUANT TO 28 U.S.C.
§§ 1915(e)(2)(B) & 1915A(b)**

I.

PROCEDURAL HISTORY

On October 23, 2013, Jacob Adam Castro (“Plaintiff”), a state inmate currently at Corcoran State Prison located in Corcoran, California, and proceeding in pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983 in the Central District of California. On November 6, 2013, United States District Judge George H. King determined that venue was not proper in the Central District and transferred the matter to the Southern District of California.

1 Plaintiff did not prepay the initial civil filing fee but instead filed a Motion to
 2 Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a), along with a
 3 Motion for Appointment of Counsel. [ECF Nos. 1, 6.] This Court granted Plaintiff’s
 4 Motion to Proceed IFP but simultaneously dismissed his Complaint for failing to state
 5 a claim upon which relief could be granted. [ECF No. 7.] Plaintiff was given leave to file
 6 an amended pleading in order to correct the deficiencies of pleading identified by the
 7 Court. *Id.* After requesting and receiving several extensions of time to comply with the
 8 Court’s Order, Plaintiff filed his First Amended Complaint (“FAC”). [ECF No. 14.]

9 II.

10 SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)

11 As the Court stated in the previous Order, the Prison Litigation Reform Act
 12 (“PLRA”) obligates the Court to review complaints filed by all persons proceeding IFP
 13 and by those, like Plaintiff, who are “incarcerated or detained in any facility [and]
 14 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the
 15 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as
 16 soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under
 17 these provisions of the PLRA, the Court must sua sponte dismiss complaints, or any
 18 portions thereof, which are frivolous, malicious, fail to state a claim, or which seek
 19 damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A;
 20 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick*
 21 *v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A); *see also Barren v. Harrington*,
 22 152 F.3d 1193, 1194 (9th Cir. 1998) (discussing § 1915A).

23 “[W]hen determining whether a complaint states a claim, a court must accept as
 24 true all allegations of material fact and must construe those facts in the light most
 25 favorable to the plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting
 26 that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).
 27 In addition, the Court’s duty to liberally construe a pro se’s pleadings, *see Karim-Panahi*
 28 *v. Los Angeles Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988), is “particularly important

1 in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).
 2 However, in giving liberal interpretation to a pro se civil rights complaint, the court may
 3 not “supply essential elements of claims that were not initially pled.” *Ivey v. Board of
 4 Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “Vague and
 5 conclusory allegations of official participation in civil rights violations are not sufficient
 6 to withstand a motion to dismiss.” *Id.*

7 **A. 42 U.S.C. § 1983 Liability**

8 Section 1983 imposes two essential proof requirements upon a claimant: (1) that
 9 a person acting under color of state law committed the conduct at issue, and (2) that the
 10 conduct deprived the claimant of some right, privilege, or immunity protected by the
 11 Constitution or laws of the United States. *See 42 U.S.C. § 1983; Nelson v. Campbell*,
 12 541 U.S. 637, 124 S. Ct. 2117, 2122 (2004); *Haygood v. Younger*, 769 F.2d 1350, 1354
 13 (9th Cir. 1985) (en banc).

14 **B. Eighth Amendment Failure to Protect claims**

15 Plaintiff alleges that Defendants failed to protect him from harm when he fell
 16 down stairs at the Imperial County Courthouse while being escorted in “waistchains” and
 17 “shackles.” (FAC at 5-6.) The Eighth Amendment, which prohibits “cruel and unusual
 18 punishments,” imposes a duty on prison officials to provide humane conditions of
 19 confinement and to take reasonable measures to guarantee the safety of the
 20 inmates. *Helling v. McKinney*, 509 U.S. 25, 31-33 (1993). However, every injury
 21 suffered by an inmate does not necessarily translate into constitutional liability for prison
 22 officials. *Osolinski v. Kane*, 92 F.3d 934, 936-37 (9th Cir. 1996); *Rhodes v. Chapman*,
 23 452 U.S. 337, 349 (1981) (noting that the U.S. Constitution “does not mandate
 24 comfortable prisons.”).

25 Thus, to assert an Eighth Amendment claim for deprivation of humane conditions
 26 of confinement a prisoner must satisfy two requirements: one objective and one
 27 subjective. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Allen v. Sakai*, 48 F.3d 1082,
 28 1087 (9th Cir. 1994). Under the objective requirement, the plaintiff must allege facts

sufficient to show that “a prison official’s acts or omissions . . . result[ed] in the denial of the ‘minimal civilized measure of life’s necessities.’” *Farmer*, 511 U.S. at 834 (quoting *Rhodes*, 452 U.S. at 347). This objective component is satisfied so long as the institution “furnishes sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety.” *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982); *Farmer*, 511 U.S. at 534; *Wright v. Rushen*, 642 F.2d 1129, 1132-33 (9th Cir. 1981). The subjective requirement, relating to the defendant’s state of mind, requires that the plaintiff allege facts sufficient to show “deliberate indifference.” *Allen*, 48 F.3d at 1087. “Deliberate indifference” exists when a prison official “knows of and disregards an excessive risk to inmate health and safety; the official must be both aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Farmer*, 511 U.S. at 837.

Here, Plaintiff’s allegations fail to state an Eighth Amendment claim because they do not rise to the level of a serious safety hazard. See *Osolinski*, 92 F.3d at 939 (finding that prisoner’s injury due to faulty oven door was not sufficient to state an Eighth Amendment cruel and unusual punishment claim because Plaintiff did not plead any “exacerbating conditions” which rendered him unable to “provide for [his] own safety,” i.e., that prison officials precluded him from avoiding the faulty oven door or rendered him unable to perceive its defective condition); see also *Tunstall v. Rowe*, 478 F. Supp. 87, 89 (N. D. Ill. 1979) (the existence of a greasy staircase which caused a prisoner to slip and fall did not violate the Eighth Amendment). As currently pleaded, the Court finds that Plaintiff alleges no facts which are sufficient to show that the conditions of confinement were objectively and demonstrably unsafe, and further fails to allege facts which show that any of the named Defendants were actually aware and consciously disregarded the risk posed. See *Helling*, 509 U.S. at 36 (exposure to demonstrably unsafe conditions may violate the Eighth Amendment if the inmate can show that the risk he faced was “so grave that it violates contemporary standards of decency”); *Farmer*, 511 U.S. at 828-29 (deliberate indifference requires a showing that specific prison

1 officials were “subjectively aware of the risk”).

2 Accordingly, as currently plead, Plaintiff has failed to show that any Defendant
3 acted with conscious disregard to a risk to his safety. *See Farmer*, 511 U.S. at 837;
4 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (to establish a deprivation of a
5 constitutional right by any particular individual, the plaintiff must allege that the
6 individual, in acting or failing to act, was the actual and proximate cause of his injury).

7 Thus, Plaintiff’s Eighth Amendment failure to protect claims are dismissed for failing
8 to state a claim upon which relief can be granted.

9 **III.**

10 **CONCLUSION AND ORDER**

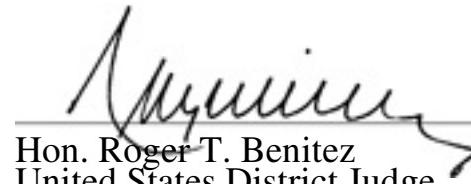
11 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

12 Plaintiff’s First Amended Complaint is **DISMISSED** without prejudice pursuant
13 to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(b). However, Plaintiff is granted forty five
14 (45) days leave from the date this Order is “Filed” in which to file a Second Amended
15 Complaint which cures all the deficiencies of pleading noted above. Plaintiff’s Amended
16 Complaint must be complete in itself without reference to the superseded pleading. *See*
17 S.D. Cal. Civ. L. R. 15.1. Defendants not named and all claims not re-alleged in the
18 Amended Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d
19 565, 567 (9th Cir. 1987). Further, if Plaintiff’s Amended Complaint fails to state a claim
20 upon which relief may be granted, it may be dismissed without further leave to amend
21 and may hereafter be counted as a “strike” under 28 U.S.C. § 1915(g). *See McHenry v.*
22 *Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

23 The Clerk of Court is directed to mail a form § 1983 complaint to Plaintiff.

24 **IT IS SO ORDERED.**

25 DATED: December 4, 2014

26 
27 Hon. Roger T. Benitez
United States District Judge